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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10 067,435	02-04 2002	George W. Hempel	TYCO-009XX	7560

7590 06/30/2003

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EXAMINER

JONES, STEPHEN E

ART UNIT PAPER NUMBER

2817

DATE MAILED: 06/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/067,435

Applicant(s)

HEMPEL ET AL.

Examiner

Stephen E. Jones

Art Unit

2817

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-12 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of copending Application No. 10/067,605 and over claims 1-17 of copending Application No. 10/067,583 in view of McManus (of record). Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application recites the same limitations of the conflicting claims (with the exception of the limitation reciting "at least a first pole piece disposed between the permanent magnet and the ferrite component") (Claims 1 and 9), and also the conflicting claims have additional limitations.

McManus teaches a circulator including pole pieces disposed between the permanent magnet and the ferrite component.

It would have been obvious to one of ordinary skill in the art to have included pole pieces such as taught by McManus between the permanent magnet material and ferrite in the co-pending application's (10/067,605, 10/067,583) claims, because it would have provided the advantageous benefit of a more efficient dissemination of magnetic flux (see McManus Col. 3, lines 28-34), thereby suggesting the obviousness of such a modification.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Passaro in view of McManus (both of record).

As noted in paper #5, the Passaro reference discloses in figure 1 a cascaded junction circulator (including the method) comprising: signal ports 1-6; junctions shown formed of conductor patterns 21-27; ferrite components 31, 32; and permanent magnet 18 thereby forming a non-reciprocal device (i.e. circulator - see title and abstract). With respect to claims 7-9 and 12, figure 1 shows that air (i.e. dielectric medium) is between the two ferrites 31, 32 and the strip transmission lines form a microwave non-reciprocal structure including ground planes 13 and one not shown (col. 3, lines 1-23).

However, Passaro does not explicitly disclose various elements such as a housing, pole pieces, and cover (and cover return), or that at least a first pole piece is disposed between the permanent magnet and the ferrite component (Claims 1 and 9).

McManus teaches a circulator using pole pieces disposed between the permanent magnet and the ferrite component.

Also, the above elements (i.e. various elements such as housing, pole pieces, and cover) are conventional in a circulator device and are required for proper environmental protection (e.g. housing, cover, cover return) and to shape the magnetic field (pole pieces).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to have added conventional environmental protection members (housing, cover, cover return) and pole pieces to the circulator device of Passaro

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because such conventional elements are required for proper/enhanced operation of the device.

Furthermore, it would have been considered obvious to one of ordinary skill in the art to have included pole pieces such as taught by McManus between the permanent magnet and ferrite in the Passaro device, because it would have provided the advantageous benefit of a more efficient dissemination of magnetic flux (see McManus Col. 3, lines 28-34), thereby suggesting the obviousness of such a modification.

### ***Response to Arguments***

Applicant's arguments filed 4/21/03 have been fully considered but they are not persuasive.

Applicant argues that the various elements such as a housing, pole pieces, and cover (and cover return) are not taught by Passaro and applicant requested a supporting reference to be cited as support for the official notice rejection.

The examiner points to the McManus reference (of record) which teaches the above described components including the pole pieces (20, 21). Also, note that the spring (22) made of steel can be considered a cover return, especially since steel is a magnetic material and the spring is between the magnet and the cover in the same manner as the present invention (i.e. in the same configuration).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

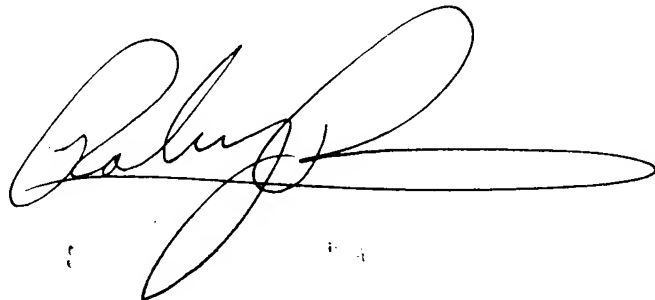
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen E. Jones whose telephone number is 703-305-0390. The examiner can normally be reached on Monday through Friday from 8 AM to 4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Pascal can be reached on 703-308-4909. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-6251 for regular communications and 703-308-6251 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

SEJ  
June 24, 2003

A handwritten signature in black ink, appearing to read "Robert J. Pascal", with a long horizontal flourish extending to the right.